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U.S. Citizenship
and Immigration
Services

21

FILE:

EAC 01 130 54658

Office: VERMONT SERVICE CENTER

Date: JAN 21 2005

IN RE:

Petitioner:

Beneficiary:

PETITION:

Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maui Johnson

R Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted. The AAO's decision will be affirmed, and the petition will be denied.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as an associate pastor. The director determined that the petitioner had not established (1) its status as a tax-exempt religious organization; (2) that the position offered to the beneficiary relates to a traditional religious function; (3) that the beneficiary had the requisite two years of continuous work experience as an associate pastor immediately preceding the filing date of the petition; (4) its ability to pay the beneficiary's salary; or (5) that the church employs paid workers. In addition, the director indicated that the beneficiary had violated his R-1 nonimmigrant religious worker status.

In dismissing the appeal, the AAO reversed the director's finding regarding the nature of the beneficiary's position. The AAO's decision did not address the last two stated grounds for denial listed above. The AAO's dismissal, therefore, rested on three issues: the petitioner's tax-exempt status, the beneficiary's past experience, and the petitioner's ability to pay the beneficiary's salary.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue concerns the petitioner's tax-exempt status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

- (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate

cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

Counsel, on motion, states that the AAO failed to take into account a letter from Rev. [REDACTED] stated clerk and associate executive of New Castle Presbytery. Rev. [REDACTED] states that the petitioner "is a congregation in good standing in the New Castle Presbytery," which, in turn, "is affiliated with the Presbyterian Church (U.S.A.)." Counsel cites a previously-submitted 1964 determination letter issued to the United Presbyterian Church in the United States of America, granting a group exemption to the denomination and its "subordinate units." This evidence, already in the record at the time of the appeal, is clearly favorable to the petitioner.

We note that the official web site of the Presbyterian Church (U.S.A) includes a "Find a Church" page, available at http://www.pcusa.org/search/churches/church_search.jsp. A search using that page yields the name and address of the petitioning church. Thus, the national denomination counts the petitioner among its members, strongly reinforcing the conclusion that the petitioner is covered by the denomination's group exemption.

For the above reasons, we withdraw the finding that the petitioner has not established qualifying tax-exempt status.

The next issue concerns the beneficiary's experience. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on March 15, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an associate pastor throughout the two years immediately prior to that date.

The initial AAO decision did not discuss the evidence relating to the beneficiary's work during the March 1999-March 2001 qualifying period. We will consider that evidence here.

A "Certificate of Service" from the Cho-Dae Presbyterian Church of Taegu indicates that the beneficiary "served as a full time Associate Pastor" from April 1, 1998 to April 1, 1999. A second "Certificate of Service," from [REDACTED] moderator of Taegu Nam Presbytery, indicates that the beneficiary "served as a full-time Mission Pastor as a Chaplain of Yeosung Commercial High School" from "April 2, 1999 to October 31, 2000." The latter date cannot be accurate, because CIS records indicate that the beneficiary entered the United States on July 6, 2000, and there is no record that he departed the United States prior to the March 2001 filing date. This is consistent with the information on the I-360 petition form, which also lists July 6, 2000 as the date the beneficiary entered the United States.

In a letter submitted with the initial filing in March 2001, Rev. [REDACTED] the petitioner's senior pastor, states that the beneficiary "has been serving as a pastor for The Korean Presbyterian Church of Salisbury since November 2000." This indicates a gap of nearly four months in the beneficiary's religious work.

On November 5, 2001, the director requested additional evidence to show that the beneficiary was *continuously* carrying on his religious duties throughout the 1999-2001 qualifying period. In response, Rev. [REDACTED] states the beneficiary "began his most recent ministry in the USA . . . [on] November 1, 2000," as pastor of Salisbury Korean Presbyterian Church (SKPC), a church that operated on the petitioner's premises. A sworn affidavit from In Sik Shin, head clerk of SKPC, states that the beneficiary "served as pastor at our church from November 1, 2000 to March 13, 2001," at which time the beneficiary began working for the petitioner. The petitioner offered no account of the beneficiary's activities between July 6 and November 1 of 2000. The beneficiary was not in Korea after July 6, 2000, and the petitioner did not identify any church in the United States where the beneficiary worked prior to November 1, 2000.

We note that the director had also requested a list of the petitioner's salaried employees. The petitioner submitted a list of four employees, not including the beneficiary, and indicated that the list was "for the year 2000." The petitioner did not explain why it did not submit a current list, reflecting its 2001 employees (including, presumably, the beneficiary). (On appeal, the petitioner submitted a list of its salaried employees as of June 2002, and the beneficiary's name is not on this list either.)

The beneficiary reported \$2,300 in gross income on his 2000 income tax return, consistent with two months or less of paid employment in the United States during that year. The director concluded that the beneficiary was not *continuously* engaged as a pastor or associate pastor during the 1999-2001 qualifying period. On appeal, counsel argued that the documents from the churches in Korea "evidence employment as a pastor from April 1, 1998 through October 2000." It remains that the beneficiary left Korea in July 2000, as the petitioner has repeatedly stipulated, and there is no evidence that he returned to Korea during the qualifying period. Notwithstanding the letters from Korea, there is no evidence that the beneficiary was carrying on the vocation of a minister (as an associate pastor or otherwise) between July 6 and November 1 of 2000. Unlike a brief vacation, this very substantial span of time constitutes an interruption in the beneficiary's activities.

In a new statement on appeal, Rev. [REDACTED] states that the beneficiary "arrived in Salisbury on July 6, 2000 by the call of the Korean Presbyterian Church of Salisbury, to be its pastor. . . . [The beneficiary] officially began his ministry on November 1, 2000." This statement is worded more ambiguously than Rev. [REDACTED] earlier statements. If he means to say that the beneficiary did not begin working for SKPC until November 1, 2000, then this statement is consistent with his earlier letters. If, on the other hand, he means to say that the beneficiary began working for SKPC shortly after his arrival, but did not "officially" begin until November 1, 2000, then he contradicts both his own multiple prior statements, and the affidavit of an SKPC official who affirmed that the beneficiary began working at the church on November 1, 2000. Either way, Rev. [REDACTED] does not indicate that the beneficiary returned to Korea at any time between July 6 and November 1 of 2000, and there is nothing in the record to indicate that the beneficiary did return to Korea during that time.

The petitioner submits copies of letters and minutes of meetings, identifying the beneficiary as the pastor of SKPC. None of these documents predate November 1, 2000 or otherwise refer to the beneficiary's presence there before that date.

The AAO dismissed the petitioner's appeal, citing (among other things) the beneficiary's low income in 2000. On motion, counsel argues that the petitioner need not show that the beneficiary was "employed" throughout the qualifying period, "only that he was 'performing the vocation, professional work, or other work continuously' throughout that period. This assertion begs the question of whether the beneficiary was, in fact, performing the vocation of a minister/pastor between July and November of 2000.

Counsel also proposes that, once ordained, a minister remains a minister, continuously and full-time. If ordination were, for immigration purposes, synonymous with continuous activity as a minister, then the statute and regulations would not call for additional evidence of such activity. The burden of proof is on the petitioner to show that the beneficiary was actively working as a minister between July 6 and November 1 of 2000; we are under no obligation to presume that, because the beneficiary was ordained, he must have been working as a minister during that time.

The petitioner has had four opportunities to demonstrate that the beneficiary was actively working as a pastor throughout the *entire* qualifying period: the initial filing, the response to the request for evidence, the appeal, and now the motion. At no time has the petitioner ever identified, or submitted anything from, any church in the United States where the beneficiary worked as a pastor prior to November 1, 2000. The certificate stating that the beneficiary was a pastor in Korea until October 31, 2000 has negligible value as evidence, because the beneficiary actually left Korea several months before that date. Even if we assume that, during those months, the beneficiary was nominally still employed by the church in Korea, this does not establish eligibility because there is no evidence that the beneficiary was actively performing any ministerial duties.

The final issue discussed in the AAO's prior decision concerns the petitioner's ability to pay the beneficiary's proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The AAO dismissed the appeal because the evidence submitted by the petitioner does not fall into any of the above categories. Upon further examination, the record does contain documents which appear to be annual financial reports from the petitioning congregation. Additional documents in the record reflect that the petitioner holds investment accounts worth in excess of one million dollars. It appears, therefore, that the petitioner is able to pay the beneficiary's proffered salary of \$33,000 per year.

The petitioner's ability to pay aside, there is no evidence that the petitioner has ever actually paid the beneficiary any salary, or that the petitioner has sought to obtain an R-1 visa on the beneficiary's behalf to allow the beneficiary to accept remuneration. There is some indication that the beneficiary has the use of an apartment and office provided by the petitioner, but other than that, the record is silent as to how the beneficiary has supported himself during the qualifying period.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the previous decision of the AAO will be affirmed.

ORDER: The AAO's decision of June 27, 2003 is affirmed. The petition is denied.